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sions had been given on the note without her consent or knowledge and that therefore the mortgage which she signed was released and unenforceable. *Held*, the wife did not stand in the relation of surety to the payee and cannot be released by reason of the extension of the note. *Bennett v. Odneal*, (Okl.) 147 Pac. 1013.

While a married woman cannot bind herself personally as a surety for her husband unless permitted by statute, she may ordinarily pledge or mortgage her separate property for his debt and if she does, such property occupies the position of a surety (1 BRANDT, SURETYSHIP (2nd ed.) 43; SPENCER, SURETYSHIP, 16; *Gall v. Fehr*, 131 Wis. 141); and will be discharged by anything which would discharge a surety who is personally liable. *Cross v. Allen*, 141 U. S. 528; *Bank v. Burns*, 46 N. Y. 170; *Dennison v. Gibson*, 24 Mich. 187; *Johns v. Reardon*, 11 Md. 465. Accordingly, it is held that where an extension of the time of payment is granted to a husband for whose debt the wife has given a mortgage as security, without the consent of the wife, she is discharged from liability and the mortgage is released. *Diehl v. Davis*, 75 Kan. 38; *Eisenberg v. Albert*, 40 Ohio St. 631; *Post v. Losey*, 111 Ind. 74. These holdings, however, are limited to cases in which the wife has mortgaged her *separate* estate. Where the wife merely joins with her husband in a mortgage of his real estate *to release her dower or homestead rights*, as in the instant case, she is not put in a position of surety in regard to them and is not entitled to the rights and privileges of sureties. *Hawley v. Bradford*, 9 Paige 200; *Tennison v. Tennison*, 114 Ind. 424; *Jenness v. Cutler*, 12 Kan. 500; *Bank v. Blythe*, 21 Ky. L. R. 1033; *Omlie v. O'Toole*, 16 N. D. 126; *Smith v. Scherck*, 491; because her dower or homestead right is regarded technically "as no estate at all," but merely a restriction which she removes by joining in the mortgage.

TRESPASS.—TITLE NECESSARY TO MAINTAIN ACTION.—Plaintiff, the record owner of certain timber lands, failed to pay the required taxes on the same, and at a sale they were bid in by the state, who became the owner, subject to an equity of redemption in plaintiff. By tax deeds void on their faces, the lands in question were conveyed by the state, and subsequently were bought by the defendant. Action was brought against the defendant for cutting and logging timber on these lands. *Held*, the fact that plaintiff had not paid the taxes on the property, or that he had not redeemed from the tax sales on which the state was purchaser, did not prevent his maintaining an action against a stranger for cutting and removing timber on the land. *Helmer v. Shevlin-Mathieu Lumber Co.*, (Minn. 1915) 151 N. W. 421.

It appears from the statement of facts that neither party was in actual possession of the lands in question. Had the plaintiff been in actual possession thereof, that alone would have been sufficient to give him the right to maintain his action in the absence of any showing of superior right or title on the part of the defendant. *Sutton v. Lockwood*, 40 Conn. 318; *Bird v. Stark*, 66 Mich. 654; *Watts v. Loomis*, 81 Mo. 236; *Dederick v. State*, 122 Tenn. 222; *Litchfield v. Ferguson*, 141 Mass. 97. In the absence of such actual possession, plaintiff may show constructive possession and maintain

his action by reason thereof. *Taylor v. Burt*, 33 Ky. L. Rep. 191; *Gwaltney v. Scottish Carolina Timber Co.*, 115 N. C. 579; *Wilson v. Phoenix Powder Co.*, 40 W. Va. 413; *Hobart-Lee Tie Co. v. Stone*, 135 Mo. App. 438. There is no question but that complete legal title in land gives the owner constructive possession sufficient to maintain trespass (*Buford v. Christian*, 149 Ala. 343; *Halleck v. Mixer*, 16 Cal. 574), but here the legal title was in the state, the plaintiff merely having an equity of redemption. Whether such a right, in the absence of actual possession, is sufficient to allow claimant to bring an action of trespass, would seem at first to be at least doubtful. The weight of authority, however, seems to be that an equitable title may operate to create a constructive possession in its holder when the premises are unoccupied. *Abbott v. Sturtevant*, 30 Me. 40 (equity of redemption); *Fernald v. Linscott*, 6 Me. 234; *Russell v. Meyer*, 7 N. D. 335; *Irwin v. Patchen*, 164 Pa. 51.